

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ROBERT E. LEE,

Plaintiff,

CIVIL ACTION NO. 11-10179

v.

DISTRICT JUDGE DAVID M. LAWSON

HENRY FORD COMMUNITY  
COLLEGE AND VANESSA TIMMONS

MAGISTRATE JUDGE VIRGINIA M. MORGAN

Defendants.

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**REPORT & RECOMMENDATION TO DISMISS COMPLAINT WITHOUT SERVICE**  
**BY U. S. MARSHAL**

This is a *pro se* 42 U.S.C. § 1983 action in which the plaintiff seeks to alter or amend a judgment. Plaintiff proceeds *in forma pauperis (ifp)* and the district judge has requested that this court consider the issue of *ifp* status and clarification of the pleadings. After due consideration, it appears that plaintiff sues defendants Henry Ford Community College and its employee Vanessa Timmons for an accounting of money received, disposed of, and disbursed on his behalf and a summary of transactions between them. Since plaintiff alleges that defendants breached a contract with him by failing to properly account for or itemize payments paid to or on behalf of plaintiff and the parties are all Michigan citizens, jurisdiction does not reside in this court. No federal question is present and diversity of citizenship is lacking. For the reasons discussed below, this court recommends that plaintiff's case be dismissed for failure to state a federal claim

under 28 U.S.C. §1915 and that the case be **DISMISSED WITHOUT PREJUDICE AND WITHOUT SERVICE.**

**Background:**

In 2009, plaintiff filed a *pro se* action which also arose out of his relationship with Henry Ford Community College. Case No. 09-12640. In that case, plaintiff alleged that defendant Henry Ford Community College (“HFCC”) violated plaintiff’s constitutional and civil rights when it barred him from its premises during final examinations. The case was dismissed under FRCP Rule 12(c) and the dismissal was upheld by the court of appeals December 30, 2010. (#37) The mandate was issued on January 21, 2011. (#38) Plaintiff filed the instant case on January 13, 2011, alleges breach of contract, and seeks an accounting of funds and transactions with respect to his account at the college. However, the complaint is difficult to understand and no federal claim appears to have been stated. Title 28 U.S.C. §1915(e)(2) provides that the court shall dismiss the case at any time if the court determines that the action fails to meet the appropriate standard. In this case, relevant considerations are whether the case is frivolous or malicious, or fails to state a claim upon which relief can be granted. A case fails to state a claim if there is a lack of subject matter jurisdiction. See FRCP Rule 12(b)(1).

Federal courts are courts of limited jurisdiction and in order for a case to be brought in federal court, there must be either a federal question (i.e. a federal statute which provides the basis for jurisdiction) or diversity of citizenship with greater than \$75,000 in controversy. See, 28 U.S.C. §1331, 1332. Plaintiff as he alleges is a resident of Dearborn Heights, Michigan and defendants are a corporation and individual citizen of Michigan. Thus, diversity is lacking and

28 U.S.C. §1332 is not appropriate. Jurisdiction for a breach of contract between two citizens of Michigan is found in the state courts of Michigan, not in this forum. Plaintiff may deem it appropriate to pursue his action there, but to provide this court jurisdiction, plaintiff must indicate that there was a violation of federal statute. While plaintiff cites 42 U.S.C. §1983, that section is not an independent basis for jurisdiction. Rather, it merely provides a vehicle to bring claims of a violation of the federal Constitution or other federal statute before the court.

S/Virginia M. Morgan  
Virginia M. Morgan  
United States Magistrate Judge

Dated: February 17, 2011

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**PROOF OF SERVICE**

The undersigned certifies that the foregoing document was served upon counsel of record and plaintiff via the Court's ECF System and/or U. S. Mail on February 17, 2011.

s/J. Johnson  
Case Manager to  
Magistrate Judge Virginia M. Morgan